

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TUCSON L.,
Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, A.L., AND A.L.,
Appellees.

No. 2 CA-JV 2013-0128
Filed April 10, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Civ. App. P. 28(c); Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County

No. 19532800

The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Scott W. Schlievert, Tucson
Counsel for Appellant

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Thomas C. Horne, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Arizona Department of Economic Security

Pima County Office of Children's Counsel
By Sarah Richelson, Tucson
Counsel for Appellees A.L. and A.L.

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Judge Brammer¹ concurred.

M I L L E R, Judge:

¶1 Tucson L. challenges the juvenile court's October 2013 ruling terminating his parental rights to his son, A.L., and daughter, A.L., on grounds of neglect or abuse, chronic substance abuse, and removal within eighteen months of the children's previous return to his care. See A.R.S. § 8-533(B)(2), (3), (11). On appeal, Tucson challenges the sufficiency of the evidence to sustain those statutory grounds for severance.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. See A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We review the evidence presented in the light most favorable to

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

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upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 In July 2010, Tucson's daughter, born five months earlier, was removed from her parents' care on grounds of neglect, substance abuse, and domestic violence. After the parents complied with a case plan, A.L. was returned to their care in August 2011. In January 2013, Tucson's son was born and tested positive for methamphetamine, amphetamine, and marijuana at the hospital. Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), was notified but was unable to locate the family until Tucson and the children's mother had a domestic violence altercation and CPS was notified. The children were taken into temporary custody.

¶4 In February 2013, ADES filed a reactivated dependency petition, and a week later the children filed a petition for termination of their parents' parental rights.² After a contested severance hearing on the children's amended petition, filed in June 2013,³ the juvenile court determined the grounds for severance had been established and terminated Tucson's parental rights to the children. This appeal followed.

¶5 On appeal, Tucson argues the juvenile court abused its discretion in severing his parental rights because there was insufficient evidence to establish grounds for severance and ADES had not provided adequate services. We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz.*

²The children's mother's parental rights were also terminated, but she is not a party to this appeal.

³The hearing was a combined dependency and severance hearing. The juvenile court also deemed the children dependent during the hearing, a determination Tucson does not challenge on appeal. ADES, which initiated the dependency proceedings but did not take a position as to severance, has taken no position on appeal.

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Dep't of Econ. Sec., 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). And, “[i]f clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.” *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶6 To establish chronic abuse of drugs, controlled substances or alcohol as a ground for severance, the party seeking severance must establish “the parent is unable to discharge parental responsibilities” because of such use “and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” § 8-533(B)(3). “[T]he juvenile court must also [find] that ADES ha[s] made reasonable efforts to reunify the family or that such efforts would have been futile.” *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, ¶ 12, 123 P.3d 186, 189 (App. 2005).

¶7 Tucson specifically contends this ground was not established by clear and convincing evidence because “there was no expert testifying that [his] drug history would probably continue for a prolonged indeterminate time” and no “testimony that [ADES] had made reasonable efforts to resolve this problem.” But Tucson cites no authority to support a claim that expert testimony was required to establish this element. *See* Ariz. R. Civ. App. P. 13(a)(6); Ariz. R. P. Juv. Ct. 106(A).

¶8 Nor can we say the juvenile court’s conclusion that his substance abuse would continue was not supported by reasonable evidence. The record shows that Tucson tested positive for marijuana and alcohol and underwent substance abuse treatment in the previous dependency proceeding. A progress report from July 2010 indicated Tucson had a history of using various drugs and that he “becomes violent” when intoxicated. Although Tucson’s daughter was returned to his custody by August 2011 after he was ninety-six percent compliant with drug screening, he was arrested in April 2012 after officers found him inside a vacant house with a bag of marijuana and prescription sleeping pills in his possession. Ten

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days later, he was arrested for driving a stolen car under the influence, possessing a marijuana pipe with residue.

¶9 As a result of these arrests, he will be incarcerated until at least the end of May 2015. The family's caseworker testified that as a result of his incarceration, Tucson could not "currently discharge his parental responsibilities." And the caseworker testified that even if Tucson were immediately released he would require further services before the children could be returned to his care.

¶10 Taken as a whole, this evidence was such that a reasonable person could conclude by clear and convincing evidence that Tucson was, as a result of substance abuse, unable to parent and that situation would continue "for a prolonged indeterminate period." § 8-533(B)(3). Likewise, although Tucson claims no evidence of reasonable efforts by ADES was presented, the record is replete with evidence of services provided to Tucson in 2010 and 2011. He makes no argument to suggest that the juvenile court could not consider these services in determining whether ADES had made reasonable efforts to reunify the family. Because we conclude reasonable evidence supported the juvenile court's ruling, we will not reverse it. *See Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266. And because sufficient evidence supported the substance-abuse ground for severance, we need not address the court's rulings on the additional grounds.

¶11 For these reasons, the juvenile court's order terminating Tucson's parental rights to A.L. and A.L. is affirmed.